

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellee,)	2 CA-CR 2008-0174
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
CEDRIC BROGER,)	Rule 111, Rules of
)	the Supreme Court
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20073997

Honorable Edgar B. Acuña, Judge

AFFIRMED

DiCampli, Elsberry & Hunley, LLC
By Anne Elsberry

Tucson
Attorneys for Appellant

PELANDER, Judge.

¶1 Appellant Cedric Broger was charged with sale and/or transfer¹ of a narcotic drug, cocaine base, a class two felony, and possession of drug paraphernalia, a class six

¹Section 13-3401(37), A.R.S., provides: “‘Transfer’ means furnish, deliver or give away.”

felony. A jury found Broger guilty of the first offense but not guilty of the second. The trial court suspended the imposition of sentence and placed Broger on three years' intensive probation and ordered that he serve 274 days in prison with credit for 226 days served as a condition of his probation. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967); *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969); and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has conscientiously reviewed the record without finding any arguably meritorious issues for appeal. She asks us to search the record for fundamental error. Broger has not filed a supplemental brief.

¶2 Counsel avows she could find no “arguable, meritorious issues” to raise on appeal but nonetheless states Broger “might raise” the sufficiency of the evidence as an arguable issue. However, we determine that sufficient evidence existed to support the jury’s verdict. We view the evidence in the light most favorable to upholding the verdict. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). At 11:55 p.m. on October 9, 2007, codefendant Darryl Griffin² agreed to arrange for the purchase of crack cocaine for undercover police officer Robert Candelaria in exchange for \$20 and a portion of the cocaine. Candelaria paid for the drugs with a \$20 bill that the police had photocopied for identification purposes and then drove to another location with Griffin to complete the purchase. Griffin met with a white or Hispanic individual at the purchase destination while a black male stood on the roof of a building ten to twelve feet directly above them and “interact[ed]” with them. The male on the roof then lowered a rope or a bed sheet to the

²The trial court granted Broger’s motion to sever his trial from Griffin’s trial.

white or Hispanic individual standing on the ground who “went up to what it was [the black male had] lowered down and then it went back up.” Griffin then returned to the car and gave Candelaria a white bag that contained crack cocaine.

¶3 Although no one could identify Broger as the individual who had been on the roof during the purchase, and although officers did not watch the building after Candelaria and Griffin departed, one officer testified that, when he returned to the scene approximately seven minutes after the sale had been completed, he observed an individual, later identified as Broger, slide down a flagpole from the roof to the ground. Another officer testified that approximately thirty to forty minutes after the sale had been completed, officers confronted Broger as he walked away from the pole, confirmed with the owner of the building that Broger did not have permission to be on the roof, and then removed a “wad of cash” from Broger’s pocket; notably, the serial number on one of the \$20 bills found in Broger’s pocket matched the police photocopy of the money provided to Candelaria to purchase the cocaine that evening. Officers found a folding chair, a jacket, and a duffel bag on the roof. Broger volunteered to the police that the duffel bag and jacket belonged to him. The duffel bag contained a scale and plastic bags consistent with the bag Candelaria’s cocaine had been wrapped in. A jury unanimously found Broger guilty of sale and/or transfer of a narcotic drug. The trial court denied Broger’s motions for judgment of acquittal and for a new trial.

¶4 As the trial court correctly noted when it denied Broger’s Rule 20 motion, “If you take the circumstantial evidence between the money, the baggie, and the black man seen on top of the roof and Mr. Broger seen coming down off the roof, that is circumstantial

evidence that people can make different opinions and draw different conclusions from.” *See State v. Sharma*, 216 Ariz. 292, ¶ 7, 165 P.3d 693, 695 (App. 2007) (judgment of acquittal granted only in the absence of substantial evidence to support the conviction); *see also State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980) (substantial evidence is evidence “reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt”). In short, there was ample evidence in the record from which the jury could find Broger had knowingly sold or transferred a narcotic drug.

¶5 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. Therefore, we affirm Broger’s conviction and the court’s imposition of probation.

JOHN PELANDER, Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

PHILIP G. ESPINOSA, Presiding Judge